



**Gituma v Chege (Civil Appeal E019 of 2025)
[2026] KEHC 2351 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E019 OF 2025
BM MUSYOKI, J
FEBRUARY 27, 2026**

BETWEEN

KELVIN MWONGERA GITUMA APPELLANT

AND

HENRY NDUNGU CHEGE RESPONDENT

*(Being an appeal from judgment and decree in Small Claims Court at Thika
(Hon. M.W. Kamau RM) claim number 668 of 2024 dated 23-01-2025)*

JUDGMENT

1. This is an appeal from the Small Claims Court and by virtue of Section 38(1) of the *Small Claims Court Act*, this court's jurisdiction is limited to matters of law only. For me to continue with the appeal, I have to identify whether there is a matter of law raised and restrict myself to that. According to the memorandum of appeal, the appellant has complained that;
 1. That the learned trial Magistrate misapprehended and/or misconceived the tenor of Section 30 of the Small Claims Court by subjecting the appellant's case to a standard of proof of beyond reasonable doubt and dismissing the appellant's suit on the basis that he had not proven liability against the respondent on a balance of probabilities.
 2. That the learned trial Magistrate misapprehended and/or misconceived the tenor, effect and consequences of the evidence tendered in court on behalf of the appellant as regards the liability of the respondent and thereby arrived at an erroneous decision.
 3. That the learned trial Magistrate erred in fact and in law in failing to properly analyze, evaluate and consider the totality of the evidence adduced by the appellant. Consequently, the trial court arrived at a biased conclusion contrary to the evidence on record.



4. That the learned trial Magistrate erred in law and in fact by exercising her discretion capriciously and not judiciously.
2. Upon reading the judgment of the trial court and the record of appeal, the only matter of law I have identified from the appeal is whether the trial court misapprehended or misapplied the purport of Section 30 of the *Small Claims Court Act*.
3. The cause of action in the trial court was an accident that occurred on 11-02-2024 involving motor vehicle registration number KCR 114N and motor cycle registration number KTWC 764L as a result of which the appellant sustained personal injuries. The respondent filed a response to the claim denying liability and pleaded contributory negligence against the appellant.
4. The record shows that when the matter came for mention on 9-10-2024, the parties agreed to proceed under Section 30 of the *Small Claims Court Act*. That section provides as follows;

‘ Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.’
5. The purport of the above Section is that, the court would adopt the documents, written submissions and statements presented to it without hearing witnesses. In my view, this Section was meant to simplify proceedings and expedite matters in order to achieve the objective of the Act. However, as the courts and parties seek to achieve this objective, it must be remembered that the Small Claims Courts remain courts of law with mandate and obligation to dispense justice as per the prevailing legal systems. The Section does not imply that the courts and parties can ignore the basics of litigation and turn the process into a congregation of a market place proceedings.
6. As the courts and parties decide to proceed under Section 30 aforesaid, they must sieve, screen and identify documents which are appropriate for determination by interrogating the documents without compromising the integrity of the proceedings. In my view, the documents and statements referred to in this Section are the pleadings and the those made to be exhibits. I do not think that witness statements especially where they give different versions of events are in the category of those contemplated in the Section. Witness statements are meant to be testimonies of the witnesses which must be tested for their veracity through cross examination or any other acceptable tool.
7. A witness statement is not an exhibit neither is it a document that a court should give any probative value unless the same is adopted on oath. If that were to be allowed, the court would be bombarded with all manner of stories and versions which are worlds apart with each party trying as expected to pull to their sides.
8. I have looked at the judgement of the trial court which analysed what was contained in the witness statements as if the same were testimonies of the parties. To me, that was a wrong approach to take owing to what I have stated above. Nevertheless, assuming that the statements were the true testimony of the witnesses, I do agree with the finding of the Adjudicator that a party who pleads negligence must give details of how the accident occurred and describe the actions that constituted negligence. A party has to do more than particularizing the alleged negligence. I do not wish to say more on this since doing so would be going into matters of facts which jurisdiction I do not have.
9. Having found that the matter was not appropriate for trial under Section 30 of the *Small Claims Courts Act*, what orders should I make in this matter? I have noted that the decision to proceed under that Section was by consent. None of the parties raised an issue with the consent thereafter or in this appeal. Section 67(2) of the *Civil Procedure Act* bars appeals from decrees passed by consent of the parties. A



consent order cannot be set aside unless it is shown that it was a product of a mistake, misrepresentation or fraud or it went against public policy. In *Edward Acholla v Sogea Satom Kenya Branch & 2 others* [2014] KEELRC 1498 (KLR), it was held that;

‘ During the pendency of a matter in court consent of the parties on any issue or issues therein is allowed. In such a case, a consent order is binding on all parties to the action if made in the presence and with consent of the parties. One cannot therefore challenge such an order unless it is shown to have been entered into through fraud or collusion or by misrepresentation.’

10. There is no application before me to review the order of the trial court which directed that the matter be heard under Section 30 of the Act and even if there were, I doubt that I have jurisdiction to set it aside. In the circumstances, the only order that commends itself to me is that this appeal is not merited. The same is hereby dismissed with no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Mugane holding brief for Mr. Wanjagi for the appellant and in absence of the respondent.

